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NORTHERN DISTRICT OF CALIFORNIA

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behalf of all others similarly situated*

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH STEVENSON, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

EXPEDIA, INC., HOTELS.COM LP;  
TRAVELOCITY.COM LP.; SABRE  
HOLDINGS CORPORATION;  
PRICELINE.COM INCORPORATED;  
BOOKING.COM B.V.; BOOKING.COM  
(USA), INC.; ORBITZ WORLDWIDE, INC.;  
HILTON WORLDWIDE INC.; STARWOOD  
HOTELS & RESORTS WORLDWIDE, INC.;  
MARRIOTT INTERNATIONAL, INC.;  
TRUMP INTERNATIONAL HOTELS  
MANAGEMENT, LLC; KIMPTON HOTEL &  
RESTAURANT GROUP, LLC;  
INTERCONTINENTAL HOTELS GROUP  
RESOURCES, INC.; and JOHN DOES 1-100,

Defendants.

No.

12

5353

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

LB

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1 Plaintiff, Elizabeth Stevenson, by and through her attorneys, on behalf of herself and all  
2 others similarly situated, brings this Class Action Complaint against Expedia, Inc. ("Expedia"),  
3 Hotels.com LP ("Hotels. com"), Travelocity.com LP ("Travelocity"), Sabre Holdings Corporation  
4 ("Sabre Holdings"), Booking.com B.V., Booking.com (USA), Inc. (Booking.com B.V. and  
5 Booking.com (USA), Inc. will be referred to as "Booking.com"), Priceline.com, Inc. ("Priceline"),  
6 and Orbitz Worldwide, Inc. ("Orbitz") (collectively, the "Online Travel Company" ("OTC")  
7 Defendants"), and Hilton Worldwide, Inc. ("Hilton"); Marriott International, Inc. ("Marriott");  
8 Trump International Hotels Management, LLC ("Trump"); InterContinental Hotels Group  
9 Resources Inc. ("InterContinental"), Starwood Hotels & Resorts Worldwide, Inc. ("Starwood"),  
10 and Kimpton Hotel & Restaurant Group, LLC ("Kimpton") (collectively, the "Hotel Defendants")  
11 and alleges, based upon personal knowledge as to herself and her own acts, and as to all other  
12 matters upon information and belief, as follows:

### 13 I. NATURE OF ACTION

14 1. Plaintiff purchased online hotel room reservations ("Room Reservations") directly  
15 from one or more of the OTC Defendants in the United States and stayed at one or more of the  
16 Hotel Defendants based on these same purchases. Plaintiff brings this direct purchaser antitrust  
17 action to challenge the OTC Defendants' conspiracy with the Hotel Defendants to enter into,  
18 maintain and/or enforce minimum resale price maintenance ("RPM") agreements and also to  
19 challenge the per se horizontal conspiracy entered into by the OTC Defendants. Plaintiff seeks  
20 damages and equitable relief from Defendants under Section 1 of the Sherman Antitrust Act, 15  
21 U.S.C. § 1.

22 2. The OTC Defendants are among the dominant online travel companies that act as  
23 retailers for Room Reservations in the United States. Here, the OTC Defendants conspired with  
24 the Hotel Defendants and agreed to impose an RPM scheme that would fix the retail price for  
25 Room Reservations and maintain "Rate Parity" on the rate of the room itself at the price the  
26 Hotel Defendants were selling the Room Reservation ("Rack Rates") and restrain competition  
27 for Room Reservations ("OTC-Hotel Agreements") in the market for online hotel reservations.

1 The OTC-Hotel Agreements included express terms to set, maintain, and enforce minimum  
2 Room Reservation prices at the Rack Rates. The OTC-Hotel Agreements restrained price  
3 competition by requiring the Hotel Defendants to impose, amend, enforce, and/or heighten  
4 enforcement of minimum resale price maintenance agreements with respect to price-cutting  
5 OTCs, and/or to prevent OTCs from discounting Room Reservations below the Rack Rates.

6 3. Pursuant to the OTC-Hotel Agreements, the Hotel Defendants were charged with  
7 enforcing the RPM scheme against OTCs that attempted to charge lower than the Rack Rates.  
8 The OTC-Hotel Agreements were part of an anti-competitive scheme under which the OTC  
9 Defendants leveraged their substantial market power and dominance to induce the Hotel  
10 Defendants into agreeing to do one or more of the following: (a) impose minimum resale price  
11 maintenance agreements on the OTCs; (b) enforce the OTC-Hotel Agreements as to the OTCs;  
12 and/or (c) refuse to supply or cut off the supply of rooms to price-cutting competing OTCs.

13 4. As a result of the concerted RPM scheme entered into by the OTC and Hotel  
14 Defendants, Room Reservations will not be sold to Plaintiff and members of the Class for less  
15 than the Rack Rate. Because all of the OTC Defendants have the same clause in most or all of  
16 their contracts, whether oral or written, none of the OTC Defendants compete with any of the  
17 other OTC Defendants on price, and the retail rates for Room Reservations are set at Rack Rates  
18 and thus are virtually identical amongst the OTC Defendants and with each Hotel Defendant the  
19 OTC Defendants contract with.

20 5. Rate Parity dates back nearly ten years, according to Hotel Marketing.com, a trade  
21 website. Prices set by the OTC and Hotel Defendants at the Rack Rate has been admitted to be  
22 "... a standard industry practice" by Nancy St. Pierre, spokesperson for Sabre Holdings, the  
23 operator of Travelocity.com.<sup>1</sup> Kimberly Hutcherson, director of sales for a Hampton Inn (a  
24

25  
26  
27 <sup>1</sup> Karin Robinson-Jacobs, "Practice that holds rates steady among Hotel Defendants, travel sites  
28 coming under fire," Dallas Morning News (Nov. 16, 2010), reprinted at <http://hsmidfw.blogspot.com/>  
(last accessed September 11, 2012).



1 Hilton brand) in the Dallas area is a believer in Rate Parity because it “leaves the brand [the  
2 Hotel] with the control of the rate.”<sup>2</sup>

3 6. The Hotel Defendants enforce Rate Parity because otherwise the OTC Defendants  
4 would drop them lower in the search results on their online sites (“Back-End Placement”) which  
5 means a significant loss of revenue for the Hotel Defendant since the OTC Defendants control at  
6 least 40 percent of the Hotel Defendants’ bookings.<sup>3</sup>

7 7. The Rack Rate is a price-fixed and uniform rate charged by the OTC Defendants  
8 with each Hotel Defendant Agreement. Any “best price “guarantees offered by the OTC  
9 Defendants are a sham because they know all prices offered for any particular Hotel Defendant  
10 will be the same price whether offered by the Hotel Defendant or any of the OTC Defendants.

11 8. Absent Defendants’ anti-competitive and deceptive conduct, Plaintiff and the other  
12 Class members would have paid less for each of the Room Reservations purchased during the  
13 Class Period. The direct consequence of Defendants’ unlawful conduct was that Plaintiff and other  
14 Class members were overcharged on their purchases of Room Reservations throughout the Class  
15 Period. Plaintiff thus seeks damages and equitable relief under Sections 4 and 16 of the Clayton  
16 Act, 15 U.S.C. §§ 15(a) and 26, for violations of Section I of the Sherman Antitrust Act, 15 U.S.C.  
17 § 1, and for violation of CAL. BUS. & PROF. CODE § 17500 *et seq.*

## 18 II. PARTIES

### 19 A. Plaintiff

20 9. Plaintiff Elizabeth Stevenson is a resident and citizen of South Carolina who made  
21 at least one direct purchase from an OTC Defendant for a stay at a Hotel Defendant and has been  
22 damaged as a result of the conduct alleged.

### 23 B. Defendants

24 10. Defendant Expedia, Inc. is a Delaware corporation with its principal place of 333  
25 108th Avenue NE, Bellevue, Washington 98004.

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26 <sup>2</sup> *Id.*

27 <sup>3</sup> *Id.*

1           11. Defendant Hotels.com LP is an affiliate of Expedia. Hotels.com LP is a Texas  
2 limited partnership with its headquarters located at 10440 North Central Expressway, Suite 400,  
3 Dallas, Texas 75231.

4           12. Defendant Travelocity.com LP is a Delaware limited partnership with its principal  
5 place of business located at 3150 Sabre Drive, Southlake, Texas 76092. Travelocity is owned by  
6 Defendant Sabre.

7           13. Defendant Booking.com B.V. is a company based in Amsterdam, the Netherlands,  
8 with its principal place of business at Herengracht 597, 1017 CE, Amsterdam, Netherlands.  
9 Booking.com B.V. owns and operates Booking.com, the leading worldwide online Room  
10 Reservations agency by room nights sold, attracting over 30 million unique visitors each month via  
11 the Internet from both leisure and business markets worldwide. Booking.com B.V. is a wholly  
12 owned subsidiary of Priceline.com Incorporated.

13           14. Defendant Booking.com (USA), Inc. is a Delaware corporation with its primary  
14 place of business located at 100 William Street, Suite 750, New York, New York 10038.  
15 Booking.com (USA), Inc. is a wholly owned subsidiary of Priceline.com Incorporated.

16           15. Defendant Priceline.com Incorporated is a Delaware corporation with its primary  
17 place of business located at 800 Connecticut Avenue, Norwalk, Connecticut 06854.

18           16. Defendant Orbitz Worldwide, Inc. is a Delaware corporation and its corporate  
19 headquarters are located at 500 W. Madison Street, Suite 1000, Chicago, Illinois 60661.

20           17. Defendant Sabre Holding Corporation, incorporated in Delaware, is headquartered  
21 at 3150 Sabre Drive, Southlake, Texas 76092.

22           18. Defendant Intercontinental Hotels Group Resources, Inc. is a Delaware corporation  
23 with its primary place of business located at 3 Ravinia Drive, Suite 100, Atlanta, Georgia 30346-  
24 2149.

25           19. Defendant Starwood Hotels & Resorts Worldwide, Inc. is a Maryland corporation  
26 with its principal place of business at One Star Point, Stamford, Connecticut 06902. Starwood's  
27  
28

hotels are primarily operated under the brand names St. Regis®, The Luxury Collection®, Sheraton®, Westin®, W®, Le Meridien®, Four Points® by Sheraton, Aloft® and Element®.

20. Defendant Marriott International, Inc. is a Delaware corporation with its principal place of business at 10400 Fernwood Road, Bethesda, Maryland 20817-1102.

21. Defendant Trump International Hotels Management, LLC, doing business as the Trump Hotel Collection, is a Delaware limited liability company headquartered at 725 Fifth Avenue, New York, New York 10022.

22. Defendant Hilton Worldwide, Inc. is a Delaware company doing business as Hilton Hotels & Resorts with its primary place of business located at 7930 Jones Branch Drive, McLean, Virginia 22102.

23. Defendant Kimpton Hotel & Restaurant Group, LLC is a Delaware limited liability company with its principal place of business located at 222 Kearny Street, Suite 200, San Francisco, CA 94108.

### III. AGENTS AND CO-CONSPIRATORS

24. Various other persons, firms and corporations, not named herein as Defendants have participated as co-conspirators with the Defendants and have performed acts and made statements in furtherance of the conspiracy. Some of these firms are as yet unidentified. The acts alleged against the Defendants in this Complaint were authorized, ordered, or done by their officers, agents, employees, or representatives, while actively engaged in the management and operation of Defendants' businesses or affairs.

25. Each Defendant acted as the principal, agent, or joint venturer of, or for, other Defendants with respect to the acts, violations, and common course of conduct alleged by Plaintiff.

26. Whenever this complaint refers to an act, deed or transaction of a corporation or entity, the complaint is alleging that the corporation or entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation or entity's business or affairs.

#### IV. JURISDICTION AND VENUE

27. Plaintiff brings this action pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26, to recover treble damages, equitable relief, costs of suit and reasonable attorneys' fees for Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. Subject matter jurisdiction is proper pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 15(a), and 28 U.S.C. §§ 1331 and 1337, because the action arises under the laws of the United States.

28. Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15 and 22, and 28 U.S.C. § 1391(b) and (c), in that at least one of the Defendants resides in this judicial district, is licensed to do business or is doing business in this judicial district.

29. This Court has personal jurisdiction over each Defendant because, *inter alia*, each Defendant: (a) transacted business throughout the United States, including in this District; (b) sold Hotel Room Reservations throughout the United States, including in this District; (c) had substantial contacts with the United States, including in this District; and/or (d) was engaged in an illegal price-fixing conspiracy that was directed at and had the intended effect of causing injury to persons residing in, located in, or doing business throughout the United States, including in this District.

30. Intradistrict Assignment: Assignment to the San Francisco or Oakland division of this Court is proper pursuant to Northern District of California Local Rule 3-2(d) because a substantial part of the events giving rise to the claims arose in this District.

#### V. SUBSTANTIVE ALLEGATIONS

##### A. The Hotel Defendants Rely on the OTC Defendants for Substantial Bookings

31. Through the Internet, the OTC Defendants offer consumers hotel rooms in many different hotels throughout the United States. The OTC websites offer convenient listings of available hotel rooms by city, allowing for easy consumer comparison of hotel rates and locations rather than jumping from one hotel website to another. These OTC Defendants offer their services to Hotel Defendants and consumers through two primary business models; the "Agency Model," and the "Merchant Model."



32. Under the Agency Model, OTCs charge a “service fee” to hotel operators on a transaction basis for booking customers into rooms at a given hotel and the consumer pays the hotel for the room directly. Under the Agency Model, the hotels should be setting-and the OTCs should be requiring – a competitive price for Room Reservations to increase business and compete against other OTC’s offering the same service. However, the Rack Rate is still utilized by all Defendants under this model.

33. Beginning in and around the year 2000, the OTCs began the pervasive use of the Merchant Model. The Merchant Model is a uniform, nationwide model which operates the same for all OTC Defendants in all jurisdictions. Under this model, the OTC Defendants are the merchants of record and are paid directly by the consumer. The OTC Defendants negotiate with each Hotel Defendant for rooms on a net basis, paying the hotel a flat rate for each room sold. This model provides control to each OTC Defendant to set the room price to the consumer, thereby controlling its profit from the markup. However, all OTC Defendants still utilize the Rack Rate as the minimum price charged to the consumer.

34. There is a “Wholesale Model,” utilized by smaller price-cutting OTCs which obtain access to rooms through wholesalers. Wholesalers, or intermediaries between the OTCs and the hotels, work directly with Hotel Defendants to obtain last minute blocks of rooms that need to be filled. The wholesalers then make those rooms available to smaller OTCs at a wholesale rate. The OTCs then sell the rooms to consumers at higher retail rates, keeping the difference as profit. Under this Wholesale Model, the OTCs utilizing this should also be competing on price by increasing or decreasing the margin added to the wholesale rates to set the retail rate to compete on price. However, smaller OTCs that attempt this are cut off from purchasing rooms by the Hotel Defendants.

35. The OTC Defendants have gained a dominant presence in the online sale of Room Reservations. The OTC Defendants have become increasingly important to the Hotel Defendants’ business – generating as much as 50% of some of the Hotel Defendants’ Room

1 Reservation traffic. Thus, the Hotel Defendants require access to the OTC Defendants'  
2 distribution network.

3 **B. The OTC Defendants Use their Dominance in the Online Hotel Reservation Market**  
4 **to Impose the RPM Scheme on each Hotel Defendant to Prevent Discounting**

5 36. As a result of their dominance, and knowing that the Hotel Defendants cannot  
6 require access to their distribution network, the OTC Defendants devised an illegal anti-  
7 competitive RPM scheme to combat new or more efficient internet retailers, including those that  
8 obtained access to hotel rooms through the Wholesale Model, by exacting uniform agreements  
9 from the Hotel Defendants. These uniform agreements, upon penalty of termination and as a  
10 condition of doing business with the OTC Defendants, required that the Hotel Defendants ensure  
11 that competing online retailers refrain from discounting from the Rack Rate and that the Hotel  
12 Defendants charge no lower than the Rack Rates themselves.

13 37. While the OTC and Hotel Defendants have maintained that their negotiated rates are  
14 confidential, in fact the agreements negotiated between each OTC and Hotel Defendant contain  
15 Rate Parity and Most Favored Nation clauses and the various OTC Defendants actually have the  
16 same wholesale or net rate with the Hotel Defendants.<sup>4</sup> In addition, the OTC Defendants, while  
17 allowed to make their own markup or margin, attempt to maintain Rate Parity on the rate of the  
18 room itself.<sup>5</sup>

19 38. In fact, the OTC-Hotel Defendants Agreements went beyond “attempts” and are and  
20 were part of an overall agreement to impose and enforce the RPM scheme. For example, in 2004,  
21 multiple hotels, including Defendants Hilton and Kimpton, and OTC’s, including Defendant  
22 Priceline, met together in Las Vegas for EyeforTravel’s second annual Revenue Management and  
23 Pricing in Travel conferences.<sup>6</sup> At the conference, Defendants Hilton, Kimpton and Priceline  
24 discussed “rate parity” and “pricing strategies.” In fact, Jimmy Shu, VP Revenue Management and

25 <sup>4</sup> Findings of Fact and Conclusions of Law, ¶ 13, *City of San Antonio, Texas, et al. v. Hotels.com, et*  
26 *al.*, Civ. No. SA-06-CA-381-OG (W.P. Tex) (Doc. 1096), July 1, 2011.

27 <sup>5</sup> *Id.* at ¶ 14 and n.5.

28 <sup>6</sup> [http://www.hotel-online.com/News/PR2004\\_2nd/May04\\_EyeForTravel.html](http://www.hotel-online.com/News/PR2004_2nd/May04_EyeForTravel.html) (last accessed August 17, 2012).

1 Distribution at Kimpton led a presentation to “address the issues associated with adapting rate  
2 parity across all distribution channels ....” Eye for Travel has annually sponsored these conferences,  
3 and the attendees have expanded to include nearly all of the Defendants.<sup>7</sup>

4 39. As part of the OTC-Hotel Defendants Agreements, the Hotel Defendants: required  
5 that competing OTCs agree to raise and maintain retail prices at the Rack Rate; threatened OTCs  
6 with legal action and/or refused to allow OTCs to sell Room Reservations if the Online Retailers  
7 refused to price fix and maintain resale prices at the Rack Rate; and in some instances, the Hotel  
8 Defendants required the wholesalers to stop providing rooms to price-cutting OTCs, such as  
9 Skoosh.com, if they refused to price fix and maintain resale prices at the Rack Rate.

10 40. Skoosh has publicly complained that it tried to sell discounted Room Reservations  
11 on its online travel site but was thwarted by the resale price maintenance scheme:

12 ‘We were openly discounting and hotels would email, call and  
13 threaten legal action,’ Skoosh told the BBC.

14 ‘Either we’d have to raise prices or take the hotels off our list,’  
15 said Dorian Harris from Skoosh.<sup>8</sup>

16 41. The OTC Defendants regularly police the OTC websites to make sure that the  
17 Hotel Defendants enforce Rate Parity. When discrepancies are found, the Hotel Defendants are  
18 notified and they will normally foreclose the price-cutting OTC from selling their rooms unless  
19 they raise their prices to the Rack Rate of that Hotel Defendant. The OTC-Hotel Defendant  
20 Agreements require such actions.

21 42. For example, Defendant Sabre (which owns Defendant Travelocity) which has the  
22 Rate Assured Hotel Program requires the Hotel Defendants to enforce the RPM scheme:<sup>9</sup>

23 For Suppliers

24 Sabre Rate Assured™ Hotel Program

25 Are you Rate Assured?

26 <sup>7</sup> <http://events.eyefortravel.com/travel-distribution-summit-north-america/past-attendees.php> (last  
27 accessed August 17, 2012).

28 <sup>8</sup> <http://www.bbc.co.uk/news/business-11330463> (last accessed August 5, 2012).

<sup>9</sup> <http://dorian.skoosh.com/open-letter-to-f-t-c--chairman-jon-leibowitz/> (last accessed August 16,  
2012).

1 Sabre Travel Network has already begun measuring properties to  
2 validate rate parity across properties prior to the official launch. So  
3 make sure your properties are rate compliant!

4 (b) If it is determined that a property is not providing rate parity in  
5 the program, it will essentially be placed on "Probation" status.

6 (c) If a property is not providing rate parity in the subsequent  
7 measurement, Sabre will consider the hotel "In Violation" ...

8 43. In fact, Sabre also runs a division called "Sabre Hospitality Solutions," which  
9 expressly markets and encourages hotels to adopt rate parity – in effect, the RPM scheme. *See*,  
10 *e.g.*, [http://www.sabrehospitality.com/blog/2011-10-27/how-hotels-can-leverage-ota-relationships-](http://www.sabrehospitality.com/blog/2011-10-27/how-hotels-can-leverage-ota-relationships-without-killing-their-pricing-strategy)  
11 [without-killing-their-pricing-strategy; http://www.sabrehospitality.com/blog/2011-11-30/three-top-](http://www.sabrehospitality.com/blog/2011-11-30/three-top-trends-in-hospitality-marketing-and-distribution-to-consider-when-planning-for-2012)  
12 [trends-in-hospitality-marketing-and-distribution-to-consider-when-planning-for-2012.](http://www.sabrehospitality.com/blog/2011-11-30/three-top-trends-in-hospitality-marketing-and-distribution-to-consider-when-planning-for-2012)

13 44. Defendant Hilton required Skoosh's wholesale supplier in the United States,  
14 AlliedTPro, to entirely cut off its contract with Skoosh as a result of Skoosh's discounting and  
15 Defendant Hilton's enforcement of its Agreement with the OTC Defendants. AlliedTPro wrote to  
16 Skoosh: "Trust me I would welcome the additional business but cannot risk our contracts with  
17 Hilton."<sup>10</sup>

18 45. Defendant Trump expressly admitted it was enforcing the OTC-Hotel Agreements,  
19 emailing Skoosh that: "if we do not maintain parity with all, we are threatened with poor  
20 placement on sites and worst case ... removal of hotel from sales sites.... Expedia threatens if  
21 Travelocity gets lower rate and vice-versa. It is a vicious cycle if we get out of parity."<sup>11</sup>

22 46. Defendant Intercontinental wrote to Skoosh "demanding that it follow Rate Parity"  
23 or Skoosh would be cut off.

24 47. In 2003, Defendant Marriott announced "a sweeping overhaul of its transient  
25 pricing, bringing parity to all Marriott distribution channels-offline and online."<sup>12</sup> During the Class

26 <sup>10</sup> <http://dorian.skoosh.com/open-letter-to-f-t-c--chairman-jon-leibowitz/> (last accessed August 15,  
27 2012).

28 <sup>11</sup> <http://dorian.skoosh.com/open-letter-to-william-baer-arnold-porter-llp/> (referring to Holiday Inn  
New York) (last accessed August 16, 2012).

<sup>12</sup> [http://www.businesstravelnews.com/More-News/Marriott-Revamps-Pricing--Offers-Complete-](http://www.businesstravelnews.com/More-News/Marriott-Revamps-Pricing--Offers-Complete-Parity,-Curtails-Fixed-Consortia-Rates/?a-btn)  
Parity,-Curtails-Fixed-Consortia-Rates/?a-btn (Last accessed August 17, 2012).



1 Period, Marriott was among the Hotel Defendants threatening Skoosh.com with legal action and/or  
2 the withdrawal of their Room Reservations if Skoosh.com did not maintain Rate Parity.

3 48. Defendant Starwood also enforces the RPM scheme. "In one email to a hotel  
4 discounter, an executive at Starwood, which runs Le Meridien, Westin, Wand Sheraton hotels,  
5 said: 'Should a wholesaler decide to sell the rooms on a room only basis, he has to make sure that  
6 the per contract agreed minimum mark-up is guaranteed.' The employee said the 'violation' of  
7 Starwood's Best Rate Guarantee was 'really serious' and the breach was reported to the Brussels  
8 headquarters.<sup>13</sup>

9 49. Similarly, Kayak.com, which is a price comparison website, told Skoosh on several  
10 occasions that it had to "play the Orbitz game,"<sup>14</sup> i.e., maintain Rate Parity, or Kayak would no  
11 longer publish Skoosh's prices. Kayak apparently felt pressured to enforce Rate Parity on behalf of  
12 the OTC Defendants because, for example, Orbitz accounted for 18.8% of Kayak's total revenues  
13 and Expedia and its affiliates accounted for 24.9% of Kayak's total revenues for the nine months  
14 ended September 30, 2010.<sup>15</sup> After Skoosh reported the RPM scheme to governmental authorities,  
15 Kayak stopped publishing Skoosh's prices on its price comparison site.

16 50. Each of these actions was taken directly because of the pressure the OTC  
17 Defendants were placing on Hotel Defendants to protect the OTC Defendants' margins by  
18 enforcing the RPM scheme. The Hotel Defendants enforced the RPM scheme because they feared  
19 losing access to the OTC Defendants' websites

20 51. Blink Booking, a mobile-only hotel booking service, echoed the claims of  
21 competing online retailers, saying: "We've long believed that the big online travel agents have  
22 been guilty of denying consumers the best prices – and that hotels' hands are tied by price parity  
23 agreements. The online travel market may appear to offer plenty of choice and competition, but  
24

25 <sup>13</sup> [http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/8467755/Hotels-face-](http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/8467755/Hotels-face-inquiry-in-price-price-fixing-scandal.html)  
26 [inquiry-in-price-price-fixing-scandal.html](http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/8467755/Hotels-face-inquiry-in-price-price-fixing-scandal.html) (last accessed August 17, 2012).

27 <sup>14</sup> <http://dorian.skoosh.com/open-letter-to-steve-hafner-c-e-o-kayak-com/> (last accessed August 17,  
28 2012).

<sup>15</sup> <http://www.businessinsider.com/kayak-ipo-2010-11> (last accessed August 17, 2012).

1 the reality is that there are lots of different shop windows selling the same rooms at the same  
2 prices – with those prices agreed through parity deals between the big groups and the big OTAs  
3 [online travel agents].”<sup>16</sup>

4 52. The Hotel Defendants knew that the OTC Defendants would enforce the  
5 Agreements or refuse to sell the Hotel Defendants’ rooms. For example, in 2009, Defendant  
6 Expedia refused to list or sell Room Reservations from Choice Hotels. Expedia’s CEO and  
7 President Dara Khosrowshahi explained:

8 ‘... As far as the discussions that we’ve had with Choice, we are  
9 not doing business with Choice right now on a chain basis. We  
don’t have a vast majority of Choice hotels on our side ...’

10 ... he added, ‘First of all, our primary goal is to have the broadest,  
11 deepest set and highest quality set of inventory for the benefit of  
our customers. And this doesn’t signal any kind of change in our  
12 overall philosophy as far as how we work with our hotel partners  
and what we’re looking at. It’s not really an issue of economics;  
13 it’s more than [sic] issue of our wanting rate parity and inventory  
parity for our customers.’

14 ‘When our customers come to Expedia, we want them to know  
15 that they’re getting the best prices and certainly, we are insistent  
on that. And to the extent that Choice doesn’t want to work under  
16 those terms.[sic] We won’t be doing business with each other.  
Those are the terms that we work with our others [sic] strategic  
17 partners, they’re comfortable where they were comfortable with it.  
[sic] So, its nothing usual from what I would say is typical  
18 practice for us in most of our other OTA competitors so to  
speak.’<sup>17</sup>

19 53. The OTC Defendants sought and obtained the agreement of the Hotel Defendants to  
20 impose and enforce “Rate Parity,” which was a restraint on price competition for the OTC  
21 Defendants’ benefit and not for any legitimate pro-competitive reason.

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23  
24  
25 <sup>16</sup> [http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/leisure/9441235/OFT-](http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/leisure/9441235/OFT-alleges-Intercontinental-Hotels-online-deals-broke-competition-law.html)  
26 [alleges-Intercontinental-Hotels-online-deals-broke-competition-law.html](http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/leisure/9441235/OFT-alleges-Intercontinental-Hotels-online-deals-broke-competition-law.html) (last accessed August 16,  
2012).

27 <sup>17</sup> [http://www.eyefortravel.com/distribution-strategies/expedia-stresses-rate-parity-and-inventory-](http://www.eyefortravel.com/distribution-strategies/expedia-stresses-rate-parity-and-inventory-parity-its-customers)  
28 [parity-its-customers](http://www.eyefortravel.com/distribution-strategies/expedia-stresses-rate-parity-and-inventory-parity-its-customers) (last accessed September 11, 2012).

1     **C.     The RPM Scheme Has Established the Rack Rate as the Price-Fixed Rate for the OTC**  
2     **and Hotel Defendants**

3         54.     As a result of the RPM Scheme, effectuated through the Agreements between the  
4     OTC and Hotel Defendants, the online sales of Hotel Defendants' rooms are at the Rack Rate.

5         55.     In the class certification Order (18-19) of the previously noted *City of San Antonio,*  
6     *et al. v. Hotels. com, et al.*, No. SA-06-CA-381-0G (W.D. Tex.), the cited deposition testimony  
7     delineates virtually identical business practices of the OTC Defendants with respect to their  
8     contracts with the Hotel Defendants, their uniform calculations of margins and sell rates.

9         56.     In the *City of San Antonio* case, the Court determined, based upon deposition  
10     testimony, that the margins of each of the OTC Defendants were identical to the other OTC  
11     Defendants. It found almost without exception, the net rate and sell rate for a given room on a  
12     given day are the same among the OTC Defendants because the agreements with the Hotel  
13     Defendants all contain "parity" or "Most Favored Nation" ("MFN") clauses. This also makes  
14     the [OTC] margins the same. *Id.* at 20, n.21 (citations to deposition testimony omitted).

15         57.     Due to the MFN clauses utilized by all of the OTC Defendants in their agreements  
16     with each Hotel Defendant, Rate Parity is guaranteed. Therefore, anyone accessing any Hotel  
17     Defendant website and any OTC Defendant website for the same room, on the same date, at the  
18     same hotel will find across-the-board identical minimum rates. The only occasional variation will  
19     be a *higher* rate posted by one of the OTC Defendants.

20         58.     Any Hotel Defendant seeking to draw in Reservations by offering lower prices or  
21     extra points for rewards programs have been met with demands by the OTC Defendants to stop  
22     competing with them and to adhere to the RPM Rack Rate Agreements.

23         59.     As a result of the "success" of the RPM scheme, the OTC Defendants are confident  
24     that all of the prices listed between them for the same room will be identical. Thus, they each offer  
25     a near identical "best price" guarantee – knowing it is the only price available even among  
26     competitors.

1           60.     The RPM Agreements, and the scheme in restraint of trade, have harmed  
2 competition in the relevant market(s) and caused prices to be higher in the relevant market(s)  
3 than the prices would have been without the Agreements.

4           61.     The uniform adoption and enforcement of Rate Parity and Most Favored Nation  
5 Clauses by the OTC Defendants was not the result of independent business judgments but the  
6 result of a horizontal *per se* price fixing agreement.

7           62.     The RPM Agreements were specifically intended to protect the OTC Defendants  
8 from price competition from other highly efficient OTC retailers offering the same inventory and to  
9 protect them from competition by the Hotel Defendants. The Hotel Defendants entered into and  
10 enforced the RPM Agreements to maintain their favorable listings on the OTC Defendants'  
11 websites. Thus, all Defendants agreed to restrain competition by mandating higher price levels,  
12 cutting off price competition, and punishing any price cutters. This scheme substantially inflated  
13 prices to consumers like the Plaintiff and the Class.

14           63.     The British Office of Fair Trade ("OFT") recently issued a "Statement of  
15 Objections" alleging that Expedia, Inc. infringed competition through the very same price fixing  
16 agreements alleged here with respect to British hotel rooms. The Telegraph reported that  
17 Expedia admitted that "it has engaged in cartel conduct on breach of the law," and is "providing  
18 information on its rivals under a 'leniency deal'" with the British authorities.

19                           **VI.    MONOPOLY/MARKET POWER**

20           64.     The relevant product market in this case is direct online retail sales of Room  
21 Reservations.

22           65.     The relevant geographic market in this case is the United States.

23           66.     By virtue of their power to control prices and exclude competition in the relevant  
24 market(s), the OTC Defendants at all relevant times possessed monopoly and/or controlling market  
25 power in the relevant market(s). The OTC Defendants and their subsidiaries hold over a 50 percent  
26 market share in the internet travel business market. Just Expedia and its subsidiaries alone account  
27  
28



1 for approximately 50% of the internet travel business market. Moreover the OTC Defendants  
2 possess a dominant share of the market(s) for online retail sales of Room Reservations.

3 **VII. ANTITRUST INJURY AND MARKET EFFECTS DUE TO**  
4 **DEFENDANTS' ANTICOMPETITIVE CONDUCT**

5 67. The overall effect of Defendants' RPM scheme has been to substantially  
6 foreclose and impair competition (and the threat of such competition) from lower-priced Room  
7 Reservations. As alleged above, had the Defendants not improperly foreclosed or stifled actual  
8 or potential competitors from competing in the market for Room Reservations, other actual or  
9 potential rival online retailers would have achieved much greater sales than they actually did (or  
10 threatened to do), given the lower prices that they charged (or could have charged upon entry),  
11 and would have posed a far greater competitive threat to the Defendants. Additionally, absent  
12 the Defendants' exclusionary conduct, barriers to entry to the market would have been lower,  
13 which: (a) would have made it easier for existing or new competitors to enter or expand their  
14 positions in the market for Room Reservations, and (b) would have caused existing or potential  
15 competitors to be attracted to the Room Reservation market because of the supracompetitive  
16 prices that the Defendants were charging. As a result, absent the Defendants' misconduct, the  
17 Defendants would have rationally perceived that there was a greater threat of potential  
18 competition in the relevant market if the Defendants did not reduce their supra-competitive  
19 prices.

20 68. The presence of unfettered competition from actual or potential competitors, which  
21 were selling lower-priced Room Reservations, would have forced the Defendants to lower the  
22 prices for their Room Reservations in order to remain competitive and/or to counter a perceived  
23 threat of additional entry.

24 69. During the relevant period, Plaintiff and the other members of the Class purchased  
25 Room Reservations directly from the Defendants. As a result of the Defendants' alleged illegal  
26 conduct, members of the Class were compelled to pay, and did pay, artificially inflated prices for  
27 the Room Reservations they purchased. Plaintiff would have been able to, *inter alia*, purchase  
28 less-expensive Room Reservations had potential competitors been able to engage in unfettered

1 competition. The prices that Plaintiff and the other Class members paid for Room Reservations  
2 during the Class Period were substantially greater than the prices that Plaintiff and the Class  
3 members would have paid absent the illegal conduct alleged herein because: (1) the prices of all  
4 Room Reservations were artificially inflated by the Defendants' illegal conduct; and (2) Class  
5 members were deprived of the opportunity to purchase Room Reservations from the Defendants'  
6 competitors at substantially lower prices. Thus, Plaintiff and the Class have, as a consequence,  
7 sustained substantial damages in the form of overcharges.

### 8 VIII. CLASS ALLEGATIONS

9 70. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this  
10 class action on behalf of herself and all members of the following class (the "Class"):

11 All persons and entities throughout the United States who paid for  
12 a room at a Defendant Hotel reserved through the OTC  
13 Defendants from January 1, 2000 through the present. Expressly  
14 excluded are (i) room reservations made as part of a package deal;  
or (ii) room reservations made without disclosure of the name of  
the hotel until after paying for the room reservation.

15 71. Plaintiff believes that the Class includes thousands of consumers and businesses  
16 across the United States, though the exact number and the identities of the Class members are  
17 currently unknown.

18 72. The members of the Class are so numerous that joinder of all Class members is  
19 impracticable.

20 73. Common questions of law and fact exist as to all members of the Class predominate  
21 over any questions affecting solely individual members of the Class. Nearly all factual, legal, and  
22 statutory relief issues raised in this Complaint are common to each of the members of the Class and  
23 will apply uniformly to every member of the Class. Among the questions of law and fact common  
24 to the Class members are:

25 a. whether Defendants engaged in agreements, contracts, combinations, and  
26 conspiracies, which had the purpose and/or effect of unreasonably restraining competition and  
27 limiting purchaser access to competing and lower-priced Room Reservations;

28 b. whether Defendants unreasonably restrained trade;

1 c. whether Defendants' anti-competitive contracts, combinations, and conspiracies  
2 have caused Plaintiff and the other members of the Class and to suffer antitrust injury in the nature  
3 of overcharges;

4 d. whether Defendants' unlawful conduct caused Plaintiff and other Class and  
5 members to pay more for the Room Reservations than they otherwise would have paid;

6 e. the appropriate Class-wide measure of damages;

7 f. whether, and in what amount, Plaintiff and the other Class and members are entitled  
8 to recover treble damages, court costs, and attorneys' fees;

9 g. whether Defendants' anti-competitive conduct is continuing, thus entitling the Class  
10 and to injunctive relief to promote unrestrained trade and free and fair competition.

11 74. Plaintiffs' claims are typical of the claims of other members of the Class because  
12 Plaintiff and every member of the Class have suffered similar injuries as a result of the same  
13 practices alleged herein. Plaintiff has no interest adverse to the interests of the other members of  
14 the Class.

15 75. Plaintiff will fairly and adequately represent and protect the interests of the Class.  
16 Plaintiff has retained able counsel with extensive experience in class action litigation. The interests  
17 of the Plaintiff are coincident with, and not antagonistic to, the interests of the other Class and  
18 members.

19 76. The questions of law and fact common to the members of the Class predominate  
20 over any questions affecting only individual members, including legal and factual issues relating to  
21 liability and damages.

22 77. Plaintiff and other members of the Class have suffered damages as a result of  
23 Defendants' unlawful and wrongful conduct. Absent a class action, Defendants will retain  
24 substantial funds received as a result of their wrongdoing, and such unlawful and improper conduct  
25 shall, in large measure, go unremedied. Absent a class action, the members of the Class will not be  
26 able to effectively litigate these claims and will suffer further losses, as Defendants will be allowed  
27 to continue such conduct with impunity and retain the proceeds of their ill-gotten gains.

78. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Class members is impracticable. Moreover, because the damages suffered by individual members of the Class are relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. The Class is readily definable, and prosecution of this action as a class action will eliminate the possibility of repetitious litigation. There will be no difficulty in the management of this action as a class action.

**IX. TOLLING OF THE STATUTE OF LIMITATIONS, FRAUDULENT CONCEALMENT, EQUITABLE TOLLING AND CONTINUING VIOLATIONS**

79. Plaintiff repeats and realleges each of the foregoing allegations as if fully set forth herein.

80. Plaintiff did not discover and could not have discovered through the exercise of reasonable diligence the existence of the claims sued upon herein until immediately prior to commencing this civil action.

81. Any applicable statutes of limitation have been tolled by Defendants' affirmative acts of fraudulent concealment and continuing misrepresentations, as the facts alleged above reveal, and *inter alia*, as follows:

- a. the OTC Defendants have testified in the *City of San Antonio* case that there is only an "industry average" in order to stay competitive;
- b. the OTC Defendants have testified in the *City of San Antonio* case that hotels do not know the OTC Defendants' markups and, therefore, the hotels do not know the price actually paid by the consumer- this is manifestly untrue given the RPM Rack Rate Agreements;
- c. the OTC Defendants have testified in the *City of San Antonio* case that the margin charged by the OTC Defendants is within their discretion – this is manifestly untrue given the RPM Rack Rate Agreements.
- d. the OTC Defendants have testified in the *City of Antonio* case that the Merchant Model was described as a "facilitation fee" to cloak their markups -further hiding the true purpose and effect of the RPM Rack Rate Agreements.



83. Defendants continue to engage in their deceptive practices, and consequently, unwary consumers are injured on a daily basis by Defendants' unlawful conduct. Therefore, Plaintiff and the Class submit that each instance that Defendants engaged in the conduct complained of herein and each instance that a member of the Class purchased a Room Reservation constitutes part of a continuing violation and operates to toll the statutes of limitation in this action.

85. Defendants' conduct was and is, by its nature, self-concealing. Still, Defendants, through a series of affirmative acts or omissions, suppressed the dissemination of truthful information regarding their illegal conduct, and have actively foreclosed Plaintiff and the Class from learning of their illegal, anti-competitive, unfair and/or deceptive acts.

## X. COUNTS

**VIOLATION OF 15 U.S.C. § 1  
(AGREEMENTS UNREASONABLY RESTRAINING TRADE  
AGAINST ALL DEFENDANTS)**

88. The Agreements, and their enforcement, constitute contracts, combinations and conspiracies that substantially, unreasonably, and unduly restrain trade in the relevant market(s), and harmed Plaintiff and the Class thereby.

**VIOLATION OF 15 U.S.C. 1  
(HORIZONTAL PER SE AGREEMENT – AGAINST OTC DEFENDANTS)**

96. Plaintiff hereby incorporates each preceding and succeeding paragraph as though full set forth herein.

97. The OTC Defendants and their unnamed co-conspirators entered into and engaged in a conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act and Section 4 of the Clayton Act.

98. The conspiracy consisted of a continuing agreement, understanding and/or concerted action between and among the OTC Defendants and their unnamed co-conspirators to fix, maintain and/or stabilize prices for online Hotel Room Reservations. Defendants' conspiracy is a per se violation of the federal antitrust laws and is, in any event, an unreasonable and unlawful restraint of trade.

1           99.    The OTC Defendants' conspiracy, and the resulting impact on the market for Online  
2 Hotel Room Reservations, occurred in and/or affected interstate commerce.

3           100.   As a proximate result of the OTC Defendants' unlawful conduct, Plaintiff and the  
4 Class have suffered injury in that they have paid supra-competitive prices for Online Hotel  
5 Room Reservations during the Class Period.

6                                   **RELIEF REQUESTED**

7           WHEREFORE, Plaintiff, on her behalf and on behalf of the Class, prays for judgment, as  
8 follows:

9           A       For an Order certifying this case as a class action against Defendants and appointing  
10 Plaintiff as Representative of the Class;

11           B.     For money damages against Defendants and in favor of Plaintiff and the Class on all  
12 claims asserted in this Complaint;

13           C.     For costs of suit incurred herein;

14           D.     For prejudgment interest to the extent allowed by law;

15           E.     For penalties as allowed by law;

16           F.     For permanent injunctive relief to enjoin further violations of the law; and

17           G.     For such other and further relief as this Court may deem just and proper.

18                                   **JURY TRIAL DEMANDED**

19           Plaintiff hereby demands a trial by jury on all issues triable of right by jury.  
20

21           DATED: October 17, 2012

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